IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.119 OF 1997

The Commissioner of Income Tax
Nasik .. Applicant.
V/s.
Kada S.S.K. Ltd., Kada .. Respondent.

Mr.A.S. Rao with Mr.Pankaj Kapoor for the applicant.

Mr.S.N. Inamdar with Mr.P. Vaidya for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 19TH APRIL, 2005.

P.C. :

1. Heard the learned counsel for the parties. The Tribunal has referred following questions for the opinion of this Court, reading as under :

> 1. Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in deleting the following additions relying on the decision of the Special Bench of the I.T.A.T., Pune in the case of Shri Chhatrapati SSK Ltd. 198 ITR 78 - AT and holding that the various funds / non refundable deposits, collected during the course of trading operations, are not trading receipts of the assessee as held by the Supreme Court in the case of Bazpur Co-operative Sugar Mills Ltd. (172 ITR 321)?
>
> 1. Non-refundable deposits Rs.4,50,650
> 2. Cane development fund, Rs.3,71,243
> 3. Drought relief fund Rs.1,85,621
> 4. Interest on N.R.D. Rs.5,13,520
>
> 2. Whether on the facts and in the circumstances of the case, the assessee is liable for deduction on account of interest on non-refundable deposits which are treated

as trading receipts of the assessee ?

2. In so far as all other items except cane development fund and interest on NRD are concerned, the issue is covered by the decision of the Apex Court in the case of **Siddheshwar S.S.K. Ltd. V/s. CIT [(2004) 270 ITR 1 (SC)]** in favour of the assessee and against the revenue. So far as cane development fund and interest on NRD are concerned, the issue will have to be referred back to the Tribunal for consideration afresh as per the judgment of the Apex Court in the case of Siddheshwar S.S.K. Ltd. (supra). As such the said issues stand remanded back to the Tribunal for consideration afresh.

3. In view of the findings of Question No.1, Question No.2 does not survive.

4. The reference is disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)